

**IN THE UNITED STATES DISTRICT COURT FOR THE  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

GERARDO ARANDA, GRANT  
BIRCHMEIER, STEPHEN PARKES, and  
REGINA STONE, on behalf of themselves  
and a class of others similarly situated,  
*Plaintiffs,*

v.

CARIBBEAN CRUISE LINE, INC.,  
ECONOMIC STRATEGY GROUP,  
ECONOMIC STRATEGY GROUP, INC.,  
ECONOMIC STRATEGY, LLC, THE  
BERKLEY GROUP, INC., and  
VACATION OWNERSHIP MARKETING  
TOURS, INC.,  
*Defendants.*

Case No. 1:12-cv-04069

Honorable Matthew F. Kennelly

**PLAINTIFFS' UNOPPOSED SUPPLEMENTAL MOTION FOR ATTORNEY'S FEES**

Plaintiffs file this unopposed supplemental motion for attorney's fees in the amount of \$3,858,119.53, stating in support as follows:

**Background**

1. In March of 2017, this Court approved the parties' settlement, which created a common fund of between \$56 million and \$76 million, depending on the number of approved claims. *See* Dkt. 596.
2. After giving final approval to the settlement, the Court also ruled on attorney's fees, setting forth a sliding scale, with the final award dependent on whether the common fund ended up being \$56 million, \$76 million, or somewhere in between. *See generally* Dkt. 629. The Court awarded an initial fee of \$14.76 million based on a fund level of \$56 million and estimated notice costs of \$2 million, and it stated that "Class Counsel may petition the Court for the remainder of the award upon conclusion of the claims-approval process." Dkt. 629 at 22.
3. The Seventh Circuit affirmed this Court's fee order in full, including its approach

to entering the final fee award once the final value of the fund was set. *See Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 795-97 (7th Cir. 2018) (“The total award is not yet known only because the number of approved claims is not yet known. Once the parties know that number, computing the remaining fees will be a mechanical exercise.”).

4. Now that the Special Master has completed his work and the Court has ruled on all but one of the parties’ challenges to that work, the final number of claims is set, and so the final fee award can be entered.<sup>1</sup>

#### **Calculating the supplemental fee amount**

5. Following the Special Master’s work and the Court’s order addressing challenges to the Special Master’s ruling, there are 184,659 approved calls.

6. Under the Settlement Agreement, each approved call is valued at \$500, subject to a *pro rata* reduction if that value, plus fees and administration expenses, would exceed \$76 million. Dkt. 502 §2.2(b).

7. With 184,659 approved calls, the common fund would far exceed \$76 million absent the \$76 million ceiling. Therefore, the value of the fund is set at \$76 million, and the Court may engage in the “mechanical exercise” of determining the final fee, as set forth below. *See Birchmeier*, 896 F.3d at 796.

- a. Pursuant to the Court’s fee award, Plaintiffs are entitled to a fee that equals “36% of the first \$10 million (\$3.6 million), 30% of the second \$10 million (\$3 million), 24% of the band from \$20 million to \$56 million (\$8.64 million), and 18% of the remainder,” minus the costs of administration. Dkt.629 at 19.

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<sup>1</sup> Defendants are currently challenging the Special Master’s award of 250 calls to Daisy Exum. Regardless of how that challenge is decided, the common fund will still be worth \$76 million.

- b. The total costs of administration are a maximum of \$2,566,002.62, broken down as follows: KCC's administration costs, which KCC has agreed to cap at \$2,261,980.59; and \$304,022.03 for the Special Master's work. Ex. 1 (L. Lucchesi Decl. ¶3); *see also* Dkt. 502 §1.34 (administration costs includes fees for Special Master's work).

8. Using the Court's fee structure set forth above and the maximum administration costs, the total fee award is \$18,378,119.53. That fee is calculated as follows: \$3,600,000.00 + \$3,000,000.00 + \$8,640,000.00 + \$3,138,119.53 (which is 18% of \$17,433,997.38, the final \$20 million minus administration costs).<sup>2</sup>

9. The Court previously granted a motion for an initial fee distribution in the amount of \$14,520,000. Dkt. 803.

10. Therefore, the remaining, final fee payable to Class Counsel is \$3,858,119.53.

11. Plaintiffs have conferred with Defendants prior to filing this motion. Defendants do not oppose this motion, but they have indicated that if they successfully appeal the Court's ruling on the parties' objections to the Special Master's rulings (Dkt. 804) such that the fund falls below \$76 million, Defendants reserve their rights to object to any future fee petition in any manner that is consistent with the Seventh Circuit's ruling on attorney's fees. Because Defendants have indicated that they intend to appeal the Court's ruling on the parties' objections to the Special Master's rulings, the parties agree that the Settlement Administrator will not make any additional payments to Class Counsel or claimants until the resolution of all appeals or until

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<sup>2</sup> The Court's fee order anticipated a slightly higher fee at the \$76 million fund level because administration costs were estimated at \$2 million at the time. Dkt. 629 at 21 ("If the fund reaches the \$76 million ceiling, the Court will award counsel \$18.48 million."). Because administration costs are deducted from the fund before the fee is calculated, the higher administration costs result in a lower fee.

there is a further Court order authorizing such payment.

**Conclusion**

12. For the reasons stated above, Plaintiffs respectfully request that the Court grant their supplemental motion for attorney's fees in the amount of \$3,858,119.53.

Dated: June 10, 2020

Respectfully submitted by:

/s/ Scott Rauscher

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*Class Counsel*